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APR 26 2006

**OFFICE OF PETITIONS**

In re Application of :  
Martin Daniels : DECISION ON PETITION  
Application No. 09/782,353 :  
Filed: February 12, 2001 :  
Attorney Docket No. 207-001 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. §1.181(a)" filed September 16, 2005.

The petition under 1.181 is **GRANTED**.

The above-identified application became abandoned for failure to reply to the "Notice of Non-compliant Amendment (37 CFR 1.121)" mailed January 10, 2005.<sup>1</sup> The Notice set a period for reply of ONE-MONTH nonextendable time limit for response. No reply having been received, the above-identified application became abandoned on February 11, 2005. A Notice of Abandonment was mailed on September 2, 2005.

In response, petitioner promptly filed the instant petition. Petitioner states that a response to the Notice dated January

<sup>1</sup> It is noted that the application was previously revived by decision mailed September 17, 2004. However, that abandonment has no bearing on the instant abandonment. The granting of the petition does not overcome the non-compliance of the amendment filed with the petition. In other words, thereafter, the amendment was properly deemed non-compliant.

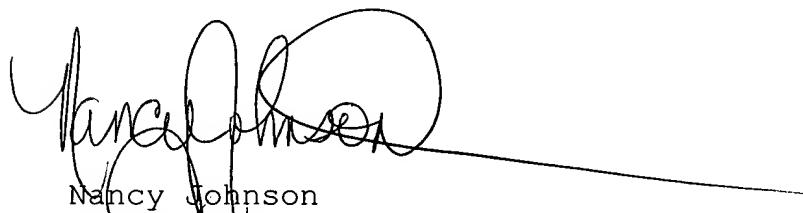
10, 2005 was received in the USPTO on January 28, 2005. In support thereof, applicant submitted a copy of their return postcard and the response.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on January 28, 2005; 2) it specifically identifies the items being filed, including "Response to Notice: 9 pages" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioner has shown that the response should be considered timely filed on January 28, 2005.

Accordingly, the Notice of Abandonment mailed September 2, 2005 is hereby VACATED, and the holding of abandonment is hereby WITHDRAWN.

Technology Center AU 3724 has been advised of this decision. The application is, thereby, forwarded to the examiner for consideration of the response to the Notice of Non-compliant Amendment (and affidavit) resubmitted on petition filed September 16, 2005.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions